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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

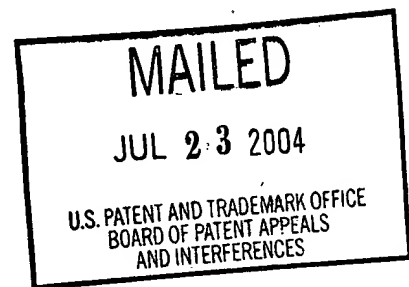
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRADFORD H. NEEDHAM, ANTHONY C. SALVADOR
and JOHN W. SHERRY

Appeal No. 2003-1056
Application No. 09/243,701

ON BRIEF



Before DIXON, BLANKENSHIP and NAPPI, Administrative Patent Judges.

NAPPI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 15 through 25 and 27 through 29.

The Invention

The invention relates to a system to provide information to people operating vehicles, see page 3 of appellants' specification. A server maintains a database of

information about various locations, each entry in the database is stored as an audio file which is linked to a location identifier, see appellants' specification pages 3 and 4. The vehicles communicate with the sever via radio or cellular phone. Each vehicle also includes a position location device such as a global positioning system (GPS) receiver. Vehicles request information from the server based upon the location of the vehicle. Operators of the vehicles can also store messages for other drivers on the server, see page 4 of appellants' specification.

Claim 15 is representative of the invention.

15. A system for distributing audio messages to vehicles comprising:

a server that receives audio messages from vehicles and transmits those messages to other vehicles; and

a storage medium adapted to store said messages for access based on the position of the vehicle that transmitted the message.

References

Fleck et al. (Fleck)	6,012,012	Jan 4, 2000 (effectively filed Dec. 23, 1997)
Kondou et al. (Kondou)	6,073,075	June 6, 2000 (filed Oct. 29, 1996)
Bourgeois et al. (Bourgeois)	6,108,534	Aug. 22, 2002 (filed Sept. 30, 1997)

Rejections at Issue

Claims 15 through 19 stand rejected under 35 U.S.C. § 102 as being anticipated by Fleck. Claims 22 through 25 and 27 through 29 stand rejected under 35 U.S.C. § 102 as being anticipated by Kondou. Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fleck and Bourgeois.

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs¹ along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellants and examiner, for the reasons stated *infra* we reverse the examiner's rejection of claims 15 through 19 under 35 U.S.C. § 102, we reverse the examiner's rejection of claims 20 and 21 under 35 U.S.C. § 103 and we affirm the examiner's rejection of claims 22 through 25 and 27 through 29 under 35 U.S.C. § 102.

¹ This decision is based upon the Appeal Brief received June 4, 2002 (Certified as being mailed on May 22, 2002 in accordance with 37 C.F.R. §1.8(a)) and the Reply Brief dated October 9, 2002 (Certified as being mailed on October 1, 2002 in accordance with 37 C.F.R. §1.8(a)).

At the outset, we note that appellants state on page 6 of the brief that "To simplify the appeal, claims 15-21 may be grouped. Claims 22-25 and 27-29 may also be grouped for convenience of appeal." 37 C.F.R. § 1.192(c) (7) (July 1, 2001) as amended at 62 Fed. Reg. 513196 (October 10, 1997), which was controlling at the time of appellant filing the brief, states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and in the argument under paragraph (c) (8) of this section appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

We will, thereby, consider the appellants' claims as standing or falling together for each of the three rejections. We will treat claim 15 as a representative claim of the group of claims 15 through 19 rejected under 35 U.S.C. § 102 as being anticipated by Fleck. We will consider claim 20 as representative of the group of claims 20 and 21 rejected under 35 U.S.C. § 103 as being unpatentable over Fleck and Bourgeois. Finally, we will treat claim 22 as a representative claim of the group of claims 22 through 25 and 27 through 29 rejected under 35 U.S.C. § 102 as being anticipated by Kondou. **See also *In re McDaniel*** 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 CFR 1.192(c)(7)] the Board is free to select a single claim from each group of claims subject to a common ground of rejection as

representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.") **See also *In re Watts*** 354 F.3d 1362, 69 USPQ2d 1453 (Fed. Cir. 2004).

First, we consider the rejection of claims 15 through 19 as being anticipated by Fleck. Appellants argue, on page 7 of the brief, that "Fleck does not teach a server that serves messages out to vehicles when they come to a position." The examiner responds on page 7 of the answer by stating "the storage system (item 20; figure 1) described in Fleck is designed to store current and historical traffic information (col. 2, lines 16-28) received from vehicles in order to provide instructions to other vehicles that may be in the vicinity of certain traffic conditions such as accidents." While we agree with the examiner that Fleck does teach a historical database (also described in column 5, lines 55-59), we do not find that this teaching meets the claimed storage medium.

Claims will be given their broadest reasonable interpretation consistent with the specification, limitations appearing in the specification will not be read into the claims. ***In re Etter*** 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). In analyzing the scope of the claim, office personnel must rely on the appellants' disclosure to properly determine the meaning of the terms used in the claims. ***Markman v. Westview Instruments, Inc.***, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word in a claim 'is not to be confused with adding an

extraneous limitation appearing in the specification, which is improper.” (emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing *Intervet America Inc v. Kee-Vet Laboratories Inc.* 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)). “[T]he terms used in the claims bear a “heavy presumption” that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” *Texas Digital Sys, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

Claim 15 includes the limitations of “a server that receives audio messages” and “a storage medium adapted to store said messages.” Thus, the storage medium stores “audio messages.” The common meaning of the term “audio” is “pertaining to, or using sound.”² This meaning is consistent with the use of the term in the appellants’ specification, which states on page 5 that the files stored on the server “include audio files 26, which are essentially digital recordings of voice communications received from a variety of vehicles.”

Fleck teaches monitoring information about vehicles traveling on a roadway and provides this information to a server by wireless transmission, see column 1, lines 65-67. Fleck teaches this information is derived by monitoring several of the vehicle’s parameters, see column 4, lines 59 through column 5, line 4. Thus, Fleck does not

² Definition from The Random House College Dictionary, Revised edition 1982.

teach that there is a voice transmission to the server and that the server stores the voice messages. On page 4 of the answer, the examiner states "Fleck discloses a server (service center) that receives audio messages (i.e. acoustic/speech, col. 6 lines 25-28, lines 58-62) from vehicles and transmits those messages." We disagree with the examiner's statement, the sections of Fleck that the examiner relies upon teach that the messages from the other vehicles are analyzed at the server and then a warning is provided to the other vehicles which is audibly provided to the drivers of other cars. Accordingly, we will not sustain the rejection of claims 15 through 19 under 35 U.S.C. § 102.

We next consider the rejection of claims 20 and 21 under 35 U.S.C. § 103 as being unpatentable over Fleck in view of Bourgeois. On page 6 of the answer, the examiner identifies that Bourgeois is relied upon to teach a time stamp to data and voice messages. Claims 20 and 21 ultimately depend upon claim 15, and as such necessarily include the limitation of a storage medium that stores audio messages for access based upon the position of the vehicle that transmits the message. The examiner has not asserted that Bourgeois teaches the limitation of a storage medium for audio messages. While we do find that Bourgeois teaches a storage medium to store audio messages, see column 6, lines 51-67, we do not find motivation in either Fleck or Bourgeois to combine the teachings such that voice messages are stored for access based upon the position of the vehicle that transmitted the message.

Finally, we consider the rejection of claims 22 through 25 and 27 through 29 as being anticipated by Kondou. On page 10 of the brief, appellants argue:

[C]laim 22 calls for a processor that sorts received information based on appended position information and identifies that information when the vehicle is proximate to a location associated with the information. Because the processor sorts received information based on appended position information, it is able to identify that information when the vehicle is proximate to a location associated with the information.

On page 2 of the reply brief, appellants make a similar argument that Kondou does not teach sorting of received information.

We are not convinced by this argument. Kondou teaches an information system in a vehicle which makes use of a mobile terminal that includes a processor and a location identification device, i.e. GPS, see Column 6, lines 51 to 61. The mobile unit also includes memory which is used to store information on the current area (area the vehicle is currently in) and the next area, see Column 9, lines 47 to 51. The processor periodically checks the location to determine if the information for the next area is loaded in memory, see Column 7, lines 28-38 and column 10, lines 16-21. If the vehicle has moved the processor obtains the information for the next area, see Column 7, lines 50-55 and Column 8, lines 16-19. In the embodiment of figure 13, information concerning the areas is retrieved from two locations, from compressed data storage (a CD ROM or memory card) and from a remote information server, see Column 10, lines 49-62. The compressed data storage unit is located in the mobile terminal (column 9,

lines 26-28) and contains data on several areas (Column 10, lines 51-52). Information from the remote information server is received through communication lines (column 10, line 60). The information is provided to the mobile unit from the remote information server in response to a request from the mobile unit that includes the vehicle location (column 7, lines 5 to 14).

We find no limitations in claim 22 which require information received by the processor to come from only one location and there is no claimed nexus between the request for information and the received information. As such, we view claim 22 to be broad enough to encompass a device, such as Kondou, where the information comes from two locations, from a remote information server in response to a transmitted request and from a compressed data storage unit. We note, the plain meaning of the term "sort" is to "to separate or take from other sorts or from others."³ As such, we find that the scope of the claim limitation of "said processor sorts received information based on appended position information," is broad enough to include the process in Kondou where the CPU obtains data for the "next area" from the compressed data media that contains data from several areas.

Appellants argue, on page 10 of the brief, that Kondou differs from the claimed invention as Kondou requires the user to riffle through the accumulated information

³ Definition from The Random House College Dictionary, Revised edition 1982.

whereas the claimed invention sorts the information based upon appended position information.

We are not convinced by this argument as appellants have not identified any limitation in claim 22, nor do we find any limitation in claim 22, which precludes the user from riffling through the accumulated information. Further, as addressed *supra* we find that Kondou teaches that the CPU does sort through the information concerning many areas stored on the compressed data media to obtain the data for the current and next areas.

On page 2 of the reply brief, appellants argue that Kondou does not identify information when the vehicle is proximate a location. We are not convinced by this argument. As stated *supra* Kondou teaches that information related to the next area is loaded based upon position of the vehicle. Kondou also teaches that information related to the current and next area is loaded into RAM and is available for the user to access (Column 9, lines 46-51). Further, in Column 11, lines 6-13, Kondou teaches that the "next area" information can be loaded when the vehicle is in the current area. Kondou teaches that the "next area" is adjacent to the "current area", see for example column 8, lines 17-18. We consider Kondou's teaching of decompressing the data for the "next area" and making it available for the user while the vehicle is in the "current area" to meet the claim limitation of identifying the information when the vehicle is proximate to the location associated with the information.

On page 2 of the reply brief, appellants also argue that the claimed invention "is not a request based system" as Kondou's, "but rather automatically provides pertinent information when the vehicle is proximate to a location associated with the information." While we agree that Kondou's system provides information to the user based upon requests, we do not find any limitation in claim 22 that precludes a request based system and limits the scope of claim 22 to an automatic system.

Finally, we are not convinced by appellants' argument, on page 3 of the reply brief, that Kondou requires the driver of the vehicle to sort through the information where as in the claimed invention "the driver is presented with only that information that is pertinent based on proximity." As stated *supra*, we find that Kondou does teach sorting the information based upon location and making the information available to the operator of the vehicle. Further, we do not find any limitation in claim 22 that the driver is presented with information.

In view of the forgoing, we sustained the examiner's rejection of claims 22 through 25 and 27-29 under 35 USC § 102.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellant [see 37 CFR § 1.192(a)]. Support for this rule has been demonstrated by our reviewing court in *In re Berger* 279 F3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed.


Appeal No. 2003-1056
Application No. 09/243,701

Cir. 2002) wherein the Federal Circuit Court stated that because the appellant did not contest the merits of the rejections in his brief to the Federal Circuit Court, the issue is waived. **See also *In re Watts*** 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

In summary, we have reversed the examiner's rejection of claims 15 through 19 under 35 USC § 102, we have reversed the examiner's rejection of claims 20 and 21 under 35 USC § 103 and we have sustained the examiner's rejection of 22 through 25 and 27-29 under 35 USC § 102.

Affirmed-in-Part


JOSEPH L. DIXON
Administrative Patent Judge


HOWARD B. BLANKENSHIP
Administrative Patent Judge


ROBERT NAPPI
Administrative Patent Judge

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Appeal No. 2003-1056
Application No. 09/243,701

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